IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.Rev.Pet.No. 710 of 1999()

CRA.219/1996 of SESSIONS COURT, THRISSUR
CC.352/1993 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED

SHANMUGHAN P.V.
S/O.VELU
POYYARA HOUSE
KOZHIMBRAM P.O.
EDAMUTTAM.

BY ADV. SRI.SANTHOSH SUBRAMANIAN

RESPONDENTS: COMPLAINANT & STATE

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1. FOOD INSPECTOR
   CHAVAKKAD CIRCLE
   CHAVAKKAD P.O.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.710 of 1999

Dated this the 29th day of May, 2007

O R D E R

The revision petitioner is the first accused, a salesman of a toddy shop stands convicted for the offence under Section 16(1)(a)(ii) of the P.F.A. Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for two months and also convicted for the offence under Section 16(1) (g) (ii) and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for one month.

2. The prosecution case is that on 14.9.1993, the Food Inspector took the sample of vinegar from the outfit of which the licensee is the second accused and the same on testing at the public analysts laboratory was found to be adulterated. The prosecution evidence consisted the testimony of PWs' 1 to 3, CW's 1 and 2, Exts. P1 to P16 and court Exts. C1 to C3. The second accused, the alleged licensee was acquitted. It is the contention of the revision petitioner that the vinegar was not

kept for sale and the same was stored for using for the preparation of dishes in the toddy shop. It is also pointed out that PW3, the Food Inspector has no case that the vinegar was an item displayed for sale as contemplated under Rule 50(15) of the PFA Rules. Of course, PW3 was testified that he purchased vinegar, issued form VI notice (Ext.P6) to the first accused and paid Rs.24/- as price of vinegar and obtained Ext. P7 receipt. Hence, according to him vinegar was meant for sale. It was proved that the same did not confirm to the standard prescribed vide appendix A20. The total solids percentage was found to be less than the standard percentage. In the instant case, the same is 1.12% as per the Central Food Laboratory report.

3. The revision petitioner relied on the decision reported in **Food Inspector vs. Mathew (1988(2) KLT 356**) to substantiate the contention that receipt of price on demand by the Food Inspector cannot be taken as conclusive of proof of the fact that the article was meant for sale. The counsel has also relied on the decision reported in **Anas Abdul Khader vs. Food Inspector (2003(3) KLT 1072**) as to the fact that unless there

is evidence that the article was meant for sale, no offence is committed.

4. I find that the in the instant case, apart from the testimony of PW3, Food Inspector, there is no evidence to establish the fact that the vinegar was meant for sale in the toddy shop. Of course, the Food Inspector has testified that no person in the vicinity was willing to be witnesses. Absence of independent witnesses as such is no ground to discard the prosecution version. All the same, in the absence of independent witnesses, the evidence has to be examined cautiously. It is pointed out by the counsel for the revision petitioner that there is no evidence to prove that vinegar was meant for sale. PW3 has not testified as to the compliance of Rule 50(15) of the P.F.A. Rules. Just receiving the price and handing over commodity as demanded by the Food Inspector is not evidence of sale. Further, the version of the accused that the vinegar was kept at the toddy shop for using in the curry preparations is a probable explanation. In the circumstances, I find that the accused is entitled to benefit of doubt and liable to be acquitted.

It cannot be held that the prosecution has proved the allegations beyond reasonable doubt.

The revision petition is allowed and the accused is acquitted.

K.R.UDAYABHANU,
JUDGE

csl